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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



IN RE THE APPLICATION OF:

Inventor : Mitchell R. Swartz

Serial no. 09/750, 480

PAPER:

Group Art Unit: 3641

Examiner: R. Palabrica

Filed: 12/28/00

For: **METHOD AND APPARATUS
TO MONITOR LOADING
USING VIBRATION**

This is a continuation of Serial no. 07/371,937

Filed: 06/27/89

Commissioner for Patents
Alexandria, VA 22313-1450

October 19, 2004

**PETITION TO THE COMMISSIONER
PURSUANT TO 37 C.F.R. 1.181**

1. This Petition is made pursuant to 37 C.F.R. 1.181 to the Commissioner of Patents, and is made to invoke his supervisory authority to correct the situation with respect to the recent Office Communication [Notice of Noncompliance, mailed September 27, 2004, regarding Appellant's Appeal Brief of the above-entitled action dated July 2, 2004; hereinafter "Notice" or "Communication" (cover as Exhibit "A", attached)].

2. Pursuant to 37 C.F.R. 1.181, there is no fee. This Petition is reasonable, based upon the reasons stated below and confirmed by the facts as discussed in the Declaration supporting this Petition.

3. In the discussion below, reference is made to the Declaration of Dr. Mitchell Swartz (hereinafter called the "Swartz Declaration") dated October 19, 2004. It will be demonstrated that this Petition is reasonable because of Mr. Carone's failure to be accurate and his systematic failure to follow a uniform standard of review.

4. The Appellant respectfully notes that the evidence disputes the comments of the Office, and notes that said office communication substantively ignores both content and argument in the Appellant's Appeal Brief. The Appellant will demonstrate that Mr. Carone appears to have made a series of substantive errors which the Appellant will forensically detail below.

5. The Office's notification states,

"5. The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6))."

THE TRUTH - The brief DOES contain a concise statement of the issues presented for review consistent with 37 CFR 1.192(c)(6).

Simply put, the brief does contain a concise statement of the issues presented for review consistent with 37 CFR 1.192(c)(6). They are listed on page 12 of the Appeal Brief.

Furthermore, they are repeated, cited with substantive argument, and then discussed in detail in each of the argument sections.

For 35 U.S.C. 112, first paragraph, these additional comments, arguments, and statements are on pages 14 through 53 of the Appeal Brief.

For 35 U.S.C. 112, second paragraph, these additional comments, arguments, and statements are on pages 54 through 70 of the Appeal Brief.

For 35 U.S.C. 102, these additional comments, arguments, and statements are on pages 71 through 85 of the Appeal Brief.

For 35 U.S.C. 103, these additional comments, arguments, and statements are on pages 86 through 105 of the Appeal Brief.

For 35 U.S.C. 101, these additional comments, arguments, and statements are on pages 106 through 134 of the Appeal Brief.

Thus the evidence reveals that the Office is incorrect. The Appeal Brief does contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).

Therefore, the Appeal Brief (which includes discussions of how the Office and abused the Applicant by ignoring his arguments, Declarations, and exhibits) was ignored again.

Therefore, sanctions are in order because the Appellant is pro se and has been again harassed by someone in the Office in violation of the normal standards of review, and in

violation of federal law, and in violation of the Appellant's (and previously Applicant's) civil rights.

6. The Office's notification states,
"As to item 5 above, the statement of issues does not provide a basis for each issue."

THE TRUTH - The Statement Of Issues DOES provide a basis for each issue

The Office is wrong for several reasons.

First, the statement of issues does provide a basis for each issue. The Appeal Brief states the Issues are:

**"Whether claims 1-20 are patentable under U.S.C. §112.
 Whether claims 1-20 are patentable under U.S.C. §112 (second paragraph).
 Whether claims 1, 3-7 are patentable under U.S.C. §102.
 Whether claims 8-20 are patentable under U.S.C. §103.
 Whether claims 1-20 are patentable under U.S.C. §101.
 Whether the Office has shown good-faith execution of MPEP 707.07(j) and MPEP 706.03(d)."**

Second, these Issues were not a problem for the Board previously, nor for the Federal Circuit Appellate Court, nor for the US Supreme Court (twice). Appellant respectfully disputes this because each and every issue is phrased correctly.

Third, the Appellant has a right to be concise, clear and accurate before the Board.

Fourth, the Office did not even FIND Appellant's concise statement of review of the issues (vide supra), so this is further evidence of confusion, confabulation, or obstruction of justice.

Fifth, if any more was stated in the Issues section, then the Examiner would purport that there were arguments in the Issues section and would return the Brief (as he has done over and over and over, previously). If the Examiner has used any more argument, the Examiner would have required the Appellant to do over the Briefs. Proof is palpable in this one example where previously the Examiner demanded of another of Appellant's Appeal Briefs

"b. The statement of Status of Amendments is improper. Any arguments that the applicant may wish to make regarding these amendments should be discussed in Argument section rather than in this section."

[A Complaint against other of Appellant's Briefs before the Board].

Sixth, the Appellant is *pro se*, and so there have been violations of U.S. Rep volume 404, pages 520-521 (72) by the Office.

7. The Office's notification states,

"6. A single ground of rejection has been applied to two or more claims in this application, and (b) the brief includes the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief."

THE TRUTH - there is discussion in the Arguments section why EACH claim is considered separately patentable

The Office is wrong for several reasons.

First, Appellant respectfully notes that the evidence disputes the Examiner and Mr. Carone because there is discussion in the Arguments section why EACH claim is considered separately patentable. To prove this with specificity, attention of the Court, Board, and Commissioner is now directed to where it was first discussed on page 13 in the Appeal Brief in the Grouping of Claims section. Furthermore, despite the false statement of the Examiner and Mr. Carone, the Appeal Brief DOES present arguments in support of the fact that the claims do not stand or fall together.

Despite the false statement of the Examiner and Mr. Carone, in the Appeal Brief, said arguments in support of the fact that the claims do not stand or fall together are explicitly discussed on page 14 of the Argument section for 35 U.S.C. 112 (first paragraph).

Despite the false statement of the Examiner and Mr. Carone, in the Appeal Brief, said arguments in support of the fact that the claims do not stand or fall together are explicitly discussed on page 57 and 58 of the Argument section for 35 U.S.C. 112 (second paragraph).

Despite the false statement of the Examiner and Mr. Carone, in the Appeal Brief, said arguments in support of the fact that the claims do not stand or fall together are explicitly discussed on page 71 of the Argument section for 35 U.S.C. 102.

Despite the false statement of the Examiner and Mr. Carone, in the Appeal Brief, said arguments in support of the fact that the claims do not stand or fall together are explicitly discussed on page 86 of the Argument section for 35 U.S.C. 103.

Despite the false statement of the Examiner and Mr. Carone, in the Appeal Brief, said arguments in support of the fact that the claims do not stand or fall together are explicitly discussed on page 106 of the Argument section for 35 U.S.C. 101.

One conclusion is that the meticulous effort of the Appellant was again ignored.

A second conclusion is that there has been a failure of due diligence, and violations of civil rights and administrative law, and obstructions of Congressional directives -- all under color of law by the Office.

A corollary is that because the Appellant is *pro se*, there have been violations of U.S. Rep volume 404, pages 520-521 (72) by the Office.

8. The Office's notification states,

"As to item 6 above, the Appellant states that the appealed claims do not stand or fall together. MPEP 1206 states that the arguments should specify the specific limitations in the rejected claims which cause the rejection to be in error. Contrary to this provision, with the exception of some arguments for dependent claims 2, 5, 6 in regard to their rejection under U. S. C 112, second paragraph, no separate, claim-specific arguments are presented for the other dependent claims under this statute. Also, no separate, claim-specific arguments are presented for all dependent claims for rejections made under the other statutes."

THE TRUTH -

The Office is wrong for several reasons.

First, Appellant respectfully disputes this because there is discussion in the Arguments section of why EACH claim is considered separately patentable.

To prove this with specificity, attention of the Court, Board, and Commissioner is now directed to where it was first discussed on page 13 in the Appeal Brief in the Grouping of Claims section.

Furthermore, despite the false statement of the Examiner and Mr. Carone, the Appeal Brief DOES present arguments in support of the fact that the claims do not stand or fall together.

Despite the false statement of the Examiner and Mr. Carone, in the Appeal Brief, said arguments in support of the fact that the claims do not stand or fall together are explicitly discussed on page 14 of the Argument section for 35 U.S.C. 112 (first paragraph).

Despite the false statement of the Examiner and Mr. Carone, in the Appeal Brief, said arguments in support of the fact that the claims do not stand or fall together are explicitly discussed on page 57 and 58 of the Argument section for 35 U.S.C. 112 (second paragraph).

Despite the false statement of the Examiner and Mr. Carone, in the Appeal Brief, said arguments in support of the fact that the claims do not stand or fall together are explicitly discussed on page 71 of the Argument section for 35 U.S.C. 102.

Despite the false statement of the Examiner and Mr. Carone, in the Appeal Brief, said arguments in support of the fact that the claims do not stand or fall together are explicitly discussed on page 86 of the Argument section for 35 U.S.C. 103.

Despite the false statement of the Examiner and Mr. Carone, in the Appeal Brief, said arguments in support of the fact that the claims do not stand or fall together are explicitly discussed on page 106 of the Argument section for 35 U.S.C. 101.

One conclusion is that the meticulous effort of the Appellant was again ignored.

A second conclusion is that there has been a failure of due diligence, and violations of civil rights and administrative law, and obstructions of Congressional directives -- all under color of law by the Office.

A corollary is that because the Appellant is *pro se*, there have been violations of U.S. Rep volume 404, pages 520-521 (72) by the Office.

9. This is unfair. This is unreasonable. This has been a pattern. Since receipt of the Remand from the Board, the Examiner and/or Mr. Carone has made false statement after false statement. If there was a fifty percent likelihood of each error (that is, if it were made innocently), then the scores of errors since then reveal that there is only a one in a ten trillion likelihood that Mr. Carone and/or the Examiner are innocent.

10. Applicant respectfully notes that the U.S. Supreme Court has ruled that any pro se litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].

WHEREFORE for the above reasons, the Applicant (now Appellant) respectfully requests a reversal, and substantive response by the Commissioner before it is necessary to seek redress in federal court, including for civil rights violations. Applicant (now Appellant) respectfully requests an apology from the Office to the Board for the delay - with transfer of the Exhibits and Appeals Briefs to the Board.

Respectfully submitted,

Mitchell R. Swartz, ScD, MD, EE
Post Office Box 81135
Wellesley Hills, Mass. 02481

Certificate Of Mailing [37 CFR 1.8(a)]

To Whom it Does Concern:

I hereby certify that this correspondence will be deposited with the United States Postal Service by First Class Mail, postage prepaid, in an envelope addressed to
"The Commissioner for Patents, Alexandria, VA 22313-1450"

on the date below.

Thank you.

Sincerely,

October 19, 2004

M.R. Swartz



OCT 21 2004
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,480	12/28/2000	Mitchell R. Swartz		7970
7590	09/27/2004		EXAMINER	
Mitchell R. Swartz, ScD, EE, MD 16 Pembroke Road Weston, MA 02493			ART UNIT	PAPER NUMBER

DATE MAILED: 09/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

EXHIBIT "A"